



# California Fair Political Practices Commission

August 1, 1986

David Benjamin  
City Attorney  
P.O. Box 8039  
Walnut Creek, CA 94596

Re: Your Request for Advice  
Our File No. A-86-182

Dear Mr. Benjamin:

Thank you for your letter requesting advice on behalf of Councilmember Evelyn Munn, regarding her duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

## QUESTION

You have asked whether Councilmember Munn may participate, as a member of the Walnut Creek City Council, in any decision regarding the following stages in the approval process for a drainage area in which her home is located:

1. The preparation and selection of alternative improvements for the drainage area;
2. Approval of the draft environmental impact report for any such project;
3. A decision on whether the drainage area should or should not be formed within the City of Walnut Creek;
4. The formation of an assessment district for the purpose of financing drainage improvements, if the assessment district involves the levy of an assessment on Councilmember Munn's property.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

### CONCLUSION

Councilmember Munn may not participate in decisions regarding the inclusion or exclusion of her property from a drainage area or an assessment district, unless the effect of the decision on her financial interests will be substantially the same as the effect on a significant segment of Walnut Creek. She is also prohibited from participating in decisions where it is reasonably foreseeable that her expenses will be increased or decreased by at least \$250 by the decision unless the effect of the decision will affect a significant segment of Walnut Creek in substantially the same manner.

### FACTS

Periodic flooding and poor drainage have been long standing problems in the Tice Creek Watershed Area, located in the southern portion of Walnut Creek. The Tice Creek watershed covers approximately 4 square miles in the Rossmoor-Tice Valley area of central Contra Costa County. The area includes approximately 2,695 acres, of which 795 acres are committed to public streets, a golf course and open space. Of the remaining 1,900 acres, 60 percent is developed to the extent possible under existing zoning, and the remaining area is subject to further development.

The Contra Costa County Flood Control and Water Conservation District ("District") has proposed a plan, the objective of which is to provide flood protection to properties in the area against a 25-year storm. The District has the right, with the consent of affected local agencies, to establish "drainage areas" based on the watershed area. In this case, the Tice Creek watershed includes portions of the City of Walnut Creek, some unincorporated area of Contra Costa County, and a very small portion of the City of Lafayette. The District proposes to create Drainage Area 67 which would effectively cover the Tice Creek watershed, for the purpose of constructing certain improvements designed to convey the discharge from a 25-year storm so that little or no flooding would result. The District plans to construct 4,500 feet of buried bypass line, 800 feet of stream channelization, 3 road crossing replacements over Tice Creek, and about 3,300 feet of new drainline at various locations within the drainage area. The estimated cost of this project is \$4,200,000.

The Draft EIR recommends that a drainage fee be established for new development which would generate approximately \$1,890,000. That sum will be \$2,310,000 short of the total

project cost. Funding sources for this shortfall have not been identified. The Draft EIR, however, states that additional funds may be obtained by federal grants, city or county funding, flood control monies, the U.S. Army Corps of Engineers, or the creation of an assessment district upon properties within the area subject to flooding. The Draft EIR offers no recommendation among these funding alternatives, nor does it address the likelihood that these alternatives, individually or together, will satisfy the funding shortfall. Similarly, the Draft EIR provides no details regarding the assessment district concept. For example, the document is silent on the possible boundaries of any such district, and whether the district should be confined to the area of immediate benefit or whether it should be expanded, to the extent legally possible, to include areas of Rossmoor.

Councilmember Munn's residence is located within the Tice Creek Watershed Area, and is within the portions of the watershed area subject to flooding and poor drainage. Under the project identified in the Draft EIR, you believe Councilmember Munn's property could be affected in the following ways: (1) As the purpose of the project is to convey the discharge from a 25-year storm so that little or no flooding results, it can be expected that if this project were constructed, drainage in the area surrounding Councilmember Munn's property would be improved; (2) part of the project calls for a 30-inch pipe from Tice Creek south of Marlo Court, east of Lancaster Road and then south along Lancaster Road to connect to an existing drainpipe; this underground pipe would be located upon a portion of Councilmember Munn's property; (3) part of the project calls for a 36-inch pipe from Orchard Lane south 375 feet along Sandra Court and then 80 feet west; again, this underground pipe would be located along a portion of Councilmember Munn's property.

The recent procedural history of the Tice Creek Watershed Project is as follows: On January 14, 1986, the District presented the Draft EIR to the City Council, and the City Council held a public hearing on the report. Upon your advice, Councilmember Munn abstained from participating as a councilmember throughout the City Council's deliberations and decision on this issue. At the public hearing, numerous residents expressed concerns about the project, including its cost, its funding shortfall, its perceived environmental damage, and the scope and application of the proposed drainage fee. At the conclusion of the meeting, the City Council declined to support the proposed drainage area, and directed staff to survey the affected property owners to determine their views on the project and their willingness to contribute to its

funding. A survey was prepared outlining three options for the watershed area. The options included a subregional system that would be less costly, but also less effective, than the project analyzed in the Draft EIR, the regional system contemplated by the Draft EIR, and a combination of subregional and regional systems.

Following the preparation of the survey, however, a citizens group called "Friends of Tice Creek" was formed. This group asked the City for the opportunity to study nonstructural methods that might achieve the District's objectives with less environmental damage and at a lower cost. On March 24, 1986, the City Council agreed to defer action pending the recommendations of this group. City efforts to survey the desires of the residents of the area were suspended pending the recommendations of "Friends of Tice Creek."

#### ANALYSIS

Since we do not yet know the nature or boundaries of the project on which Councilmember Munn may be making decisions, we cannot presently answer the specific questions posed. However, we can articulate the guidelines to be used in determining whether Councilmember Munn is prohibited from participating in a particular vote. We can also make certain general conclusions.

The Political Reform Act requires that public officials disqualify themselves from making or in any way participating in any decision in which they have a financial interest. Section 87100. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family, or on any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more. Section 87103. Thus, Councilmember Munn may not participate in a decision if:

(1) It will have a material financial effect on herself or on her real property.

#### AND

(2) The effect of the decision will be distinguishable from the effect on the public generally.

Material Financial Effect

A decision will be considered to have a material financial effect on Councilmember Munn herself or on her real property if the effect of the decision meets any of the tests provided in Commission regulations 2 Cal. Adm. Code Sections 18702(a) or (b)(2) or 18702.1(a)(3) and (4).<sup>2/</sup>

Commission Regulation 18702(a) provides that:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

Commission Regulation 18702(b)(2) provides that the effect of a decision on an interest in real property will be considered material if the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;  
or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(b)(2)(A) and (B).

Councilmember Munn has advised us that her home has a fair market value of approximately \$215,000, hence a decision will be considered to have a material financial effect on Councilmember Munn's property if it is reasonably foreseeable

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<sup>2/</sup> Regulations 2 Cal. Adm. Code Sections 18000, et seq., all references to regulations are to Title 2, Division 6 of the California Administrative Code.

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that the value of the property will be affected by at least \$1,075 as a result of the decision.

Assuming that any underground pipes located upon Councilmember Munn's property will not affect permanent structures such as the home, a swimming pool, etc., we do not believe the mere laying of the pipes will affect the fair market value of her property.

With regard to the effect which improved drainage may have upon her property, Councilmember Munn informs us that she has lived in her home for 28 years and that a culvert near her home prevents her property from becoming flooded. She also indicates that even in the years when other parts of the Tice Creek Watershed Area have flooded, her property has not been flooded, access to the property has not been impaired, and the property has not been damaged. She indicates that the only problem with her property during the flooding periods has been that the basketball court occasionally becomes covered with water. Based on these facts, we do not believe that Councilmember Munn's property will be materially affected, as defined in Regulation 18702(b)(2), by decisions which affect whether the drainage project will be constructed.

However, we must also analyze whether Councilmember Munn may be disqualified under the provisions of Regulation 18702.1. Regulation 18702.1 provides in pertinent part as follows:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

\* \* \*

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more;

(4) It is reasonably foreseeable that the personal expenses, income, assets, or liabilities

of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision....

Under this regulation, Councilmember Munn may not participate in any decision concerning whether her property is included or excluded from the drainage district or from an assessment district. She also may not participate in any decision if it is reasonably foreseeable that her expenses will be increased or decreased by at least \$250 by the decision. The Commission has interpreted the latter provision to mean that expenses will be affected by \$250 or more within a one year period. Therefore, Councilmember Munn may not, for example, participate in a decision which will affect whether or not a project is completed if it is reasonably foreseeable that as a result of the project being completed she will incur expenses of \$250 or more per year. Cf. MacKenzie Brown Opinion, 4 FPPC Opinions 19 (No. 77-024, Feb. 7, 1978).

Since it is reasonably foreseeable that some decisions in connection with the drainage district will have a material financial effect on Councilmember Munn's financial interests, we must then determine whether the effects of those decisions upon her interests are distinguishable from the effects on the public generally.

#### Public Generally

Commission Regulation 18703 provides:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

Regulation 18703. (Emphasis added.)

Ms. Munn is a member of the Walnut Creek City Council. Thus the "public" in this case is made up of the population of Walnut Creek. See Owen Opinion, 2 FPPC Opinions 77, 81 (No. 76-005, June 2, 1976).

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In determining whether an affected group constitutes a significant segment of the public, the Commission has not established a numerical standard, but has elected to pursue a case-by-case analysis, taking into consideration the numerosity and the diversity of the group in question. See Commission Opinions: Owen, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976); Ferraro, 4 FPPC Opinions 62 (No. 78-009, November 7, 1978); Overstreet, 6 FPPC Opinions 12 (No. 80-010, March 12, 1981); and Legan, 9 FPPC Opinions 1 (No. 85-001, August 20, 1985).

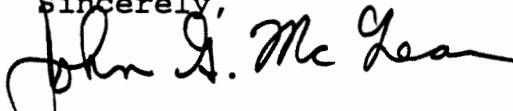
In Owen, supra, the Commission found that homeowners in and around the 23 square block "core area" of the City of Davis constituted a significant segment of the public. You have argued that the size of the class in the present situation compares favorably to that in Owen. However, at the present time we do not know how many residents will be affected in "substantially the same manner" with regard to any particular decision because we do not know the boundaries of the drainage district or the assessment district, etc.

In our telephone discussions, you indicated that 8,932 residents of the City of Walnut Creek live within the watershed area; of that group, 776 Walnut Creek residents live in flood prone areas or close enough to be affected by loss of access or services due to flooding. The population of Walnut Creek is 60,780.

Given these facts, we do not believe that 776 residents constitute a significant segment of the residents of the City of Walnut Creek. On the other hand, we agree with you that 8,932 residents constitute a significant segment of the Walnut Creek residents. Hence, if a decision will affect Councilmember Munn in substantially the same manner as all of the 8,932 residents who reside within the watershed area (e.g. all will be required to pay the same assessment) she may participate in that decision because the effect upon her is the same as the effect upon the "public generally."

I trust this letter has responded to the questions you have presented. If you have any further questions regarding the foregoing, I may be reached at (916) 322-5901.

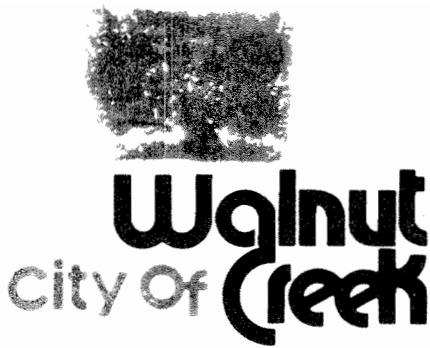
Sincerely,



John G. McLean  
Counsel  
Legal Division

JGM:plh





S P C  
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May 22, 1986

Mr. Robert E. Leidigh  
Counsel, Legal Division  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California 95804-0807

Re: Request for Advice on behalf of Evelyn Munn

Dear Mr. Leidigh:

I have been authorized by Evelyn Munn, Council Member of the City of Walnut Creek, to seek on her behalf this request for formal written advice pursuant to Government Code §83114(b). Council Member Munn's mailing address is 35 Sandra Court, Walnut Creek, California 94595. This request seeks guidance on Council Member Munn's obligations under the conflict of interest provisions of the Political Reform Act of 1974. The facts material to the consideration of the questions presented below are as follows:

I. STATEMENT OF FACTS.

Periodic flooding and poor drainage have been long standing problems in the Tice Creek Watershed Area, located in the southern portion of Walnut Creek. The Tice Creek watershed covers approximately 4 square miles in the Rossmoor-Tice Valley area of central Contra Costa County (see Exhibit "A," attached hereto and incorporated herein by this reference; Exhibit "B," also attached, shows the area within the watershed that is affected by floods or poor drainage). The area includes approximately 2,695 acres, of which 795 acres are committed to public streets, a golf course and open space. Of the remaining 1,900 acres, 60 percent is developed to the extent possible under existing zoning, and the remaining area is subject to further development. At this time, approximately 9,000 residents occupy 6,000 homes in the watershed area; of these, 340 properties are in flood prone areas or close enough to be affected by loss of access or services due to flooding.

The Contra Costa County Flood Control and Water Conservation District ("District") has proposed a plan, the objective of which is to provide flood protection to properties in the area against a 25-year storm. As an agency created by state law (See Acts 1656,

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Water-Uncodified Acts), the District has the right, with the consent of affected local agencies, to establish "drainage areas" based on the watershed area. In this case, the Tice Creek watershed includes portions of the City of Walnut Creek, some unincorporated area of Contra Costa County, and a very small portion of the City of Lafayette. The District proposes to create Drainage Area 67 which would effectively cover the Tice Creek watershed, for the purpose of constructing certain improvements designed to convey the discharge from a 25-year storm so that little or no flooding would result. The project is set forth in detail in the draft environmental impact report ("Draft EIR"), attached to this request as Exhibit "C." Briefly, the District plans to construct 4500 feet of buried bypass line, 800 feet of stream channelization, 3 road crossing replacements over Tice Creek, and about 3300 feet of new drainline at various locations within the drainage area (see Exhibit "D," which shows the proposed improvements). The estimated cost of this project is \$4,200,000. The Draft EIR recommends that a drainage fee be established for new development which would generate approximately \$1,890,000, \$2,310,000 short of the total project cost. Funding sources for this shortfall have not been identified. The draft EIR, however, states that additional funds may be obtained by federal grants, city or county funding, flood control monies, the U. S. Army Corps of Engineers, or the creation of an assessment district upon properties within the area subject to flooding. The Draft EIR offers no recommendation between these funding alternatives, nor does it address the likelihood that these alternatives, individually or together, will satisfy the funding shortfall. Similarly, the Draft EIR provides no details regarding the assessment district concept. For example, the document is silent on the possible boundaries of any such district, and whether the district should be confined to the area of immediate benefit or whether it should be expanded, to the extent legally possible, to include areas of Rossmore with its population of approximately 8,000 people and 5,700 dwelling units.

The establishment of Drainage Area 67 would require action by the Walnut Creek City Council on several issues. Under state law, no drainage area may be formed within the boundaries of a city without the consent of the City Council (Section 12.2, Act 1656). The consent of the Walnut Creek City Council, therefore, would be required before the district can form the drainage area. Second, the District has asked that the City Council approve the Draft EIR as a "responsible agency" under the California Environmental Quality Act. Third, the City Council's consent would be required to form an assessment district to finance the project improvements, if indeed an assessment district is chosen as an appropriate financing device. Finally, the City Council's approval may be required on other financing proposals which the District might make.

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The recent procedural history of the Tice Creek Watershed Project is as follows: On January 14, 1986, the District presented the Draft EIR to the City Council, and the City Council held a public hearing on the report (see staff report dated January 14, 1986, attached as Exhibit "E"). Upon my advice, Council Member Munn abstained from participating as a council member throughout the City Council's deliberations and decision on this issue. At the public hearing, numerous residents expressed concerns about the project, including its cost, its funding shortfall, its perceived environmental damage, and the scope and application of the proposed drainage fee. At the conclusion of the meeting, the City Council declined to support the proposed drainage area, and directed staff to survey the affected property owners to determine their views on the project and their willingness to contribute to its funding. A survey was prepared outlining three options for the watershed area (see "Tice Valley Watershed Survey," attached as Exhibit "F"). The options included a subregional system that would be less costly, but also less effective, than the project analyzed in the Draft EIR, the regional system contemplated by the Draft EIR, and a combination of subregional and regional systems.

Following the preparation of the survey, however, a citizens group called "Friends of Tice Creek" was formed. This group asked the City for the opportunity to study non-structural methods that might achieve the District's objectives with less environmental damage and at a lower cost. On March 24, 1986, the City Council agreed to defer action pending the recommendations of this group. City efforts to survey the desires of the residents of the area were suspended pending the recommendations of "Friends of Tice Creek."

Given the uncertainty over the ultimate project, it is difficult to state with certainty the steps which the City Council will be asked to take in the future. If a new project is identified and supported, however, it is likely that environmental analysis will be required and that the City Council will be asked, as before, to review the environmental analysis as a responsible agency under CEQA. The Council will also be asked to give its consent to the formation of the proposed drainage area. The Council's role in financing the improvements is unforeseeable until a project is identified, along with its costs and expected revenues.

## II. COUNCIL MEMBER MUNN'S FINANCIAL INTEREST.

Council Member Munn owns her residence at 35 Sandra Court located within the Tice Creek Watershed Area. Council Member Munn's property is shown in red on Exhibit "B," which also shows the portions of the watershed area subject to flooding and poor drainage. Under the project identified in the draft EIR, Council Member Munn's property could be affected in the following ways: (a) As the purpose of the project is to convey discharge from a 25-year storm so

that little or no flooding results, it can be expected that if this project were constructed, drainage in and around Council Member Munn's property would be improved; (2) Part of the project calls for a 30-inch pipe from Tice Creek south of Marlo Court, east of Lancaster Road and then south along Lancaster Road to connect to an existing drainpipe; the map on Exhibit I shows this underground pipe located upon a portion of Council Member Munn's property; (3) Part of the project calls for a 36-inch pipe from Orchard Lane south 375 feet along Sandra Court and then 80 feet west; again, the map on Exhibit I shows that this underground pipe would be located along a portion of Council Member Munn's property.

### III. QUESTION PRESENTED.

May Council Member Munn participate, as a member of the City Council, in any or all of the following stages in the approval process for Drainage Area 67?

1. The preparation and selection of alternative improvements for Drainage Area 67;
2. Approval of the draft environmental impact report for any such project;
3. A decision on whether Drainage Area 67 should or should not be formed within the City of Walnut Creek;
4. The formation of an assessment district for the purpose of financing drainage improvements, if the assessment district involves the levy of an assessment on Council Member Munn's property.

### IV. DISCUSSION.

There are facts presented in this request which suggest that, under current FPPC Opinions, Council Member Munn should be allowed to participate in the City Council's decisions regarding Drainage Area 67.

At the present time, it can be argued that it is not "reasonably foreseeable" that the value of Council Member Munn's home will be affected by the formation of Drainage Area 67. The City Council's apparent rejection of the project shown in the draft EIR means that, at this time, the nature of the project and its benefits and burdens, both physical and financial, are uncertain. Until the neighborhood task force has presented its alternative plan, and until that plan has been presented and analyzed, it is not possible to state with certainty whether, and to what extent, Council Member Munn's home may be affected. The lack of project definition also frustrates an analysis of the materiality of any financial effect on Council Member Munn's property. Until the drainage project is

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actually designed and analyzed, and a method of financing selected, it is not possible to state with certainty whether the financial effect of this project on Council Member Munn's home will be material.

Finally, an argument can be made that Council Member Munn should be able to participate at every stage in the decision-making process under the "public generally" exception (Government Code §87103). Section 18703 of the FPPC Regulations provides that an official may participate in a governmental decision, despite a reasonably foreseeable and material financial effect, if the decision "...will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public." Under existing FPPC opinions, proposed Drainage Area 67 may be viewed as a "significant segment of the public." Because it appears that Council Member Munn's home would be affected in substantially the same manner as the homes in the area, viewing the proposed drainage area as a "significant segment of the public" would allow her to participate at every stage of the decision-making process.

The FPPC has looked at two criteria to determine whether a certain class qualifies as a significant segment of the public: it must be large in numbers and heterogeneous in quality (Ferraro, 4 FPPC Ops. 62 (1978)). On the two occasions that the Commission applied this test to residential property owners, the Commission found that the class was a significant segment of the public and allowed the official to participate. In Ferraro, the Commission concluded that the class of persons who own and rent 3 or fewer residential units constitutes a significant segment of the public; as a consequence, council members of the City of Los Angeles who were members of that class were allowed to participate in decisions in residential rent control. The commission found that the class was large in numbers, and it was composed of a diverse group of citizens from virtually every occupation and interest group. Applying a similar rationale, the Commission found that homeowners in and around the 23 square block "core area" of Davis was a significant segment of the public (Owen, 2 FPPC Ops. 77, 81 (1976)). A planning commissioner was therefore allowed to participate in revisions to the core area plan because any possible increase in value to the commissioner's home would be substantially the same as the effect on numerous other residential properties.

This case appears to meet both criteria as applied in the Ferraro and Owen opinions. The class of persons included in the proposed Drainage Area is large in numbers: The proposed area includes approximately 6,000 homes and 9,000 residents; of these, approximately 340 properties in the 4 square-mile watershed experience flooding or flood-related problems. Although clearly not as large as the class of residential rental property owners in the

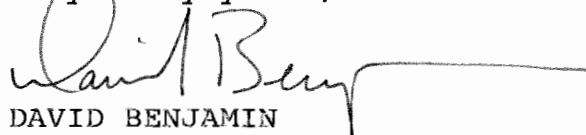
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City of Los Angeles, the size of this class seems to compare favorably with the number of homeowners in the Davis core area. The class of property owners in the proposed drainage area also appears to meet the diversity requirement. This class has none of the attributes of an industry which the Commission feared in Ferraro; rather, we can conclude that the interests and occupations of the 340 property owners are as diverse as the interests and occupations of the owners of residential income property in Ferraro.

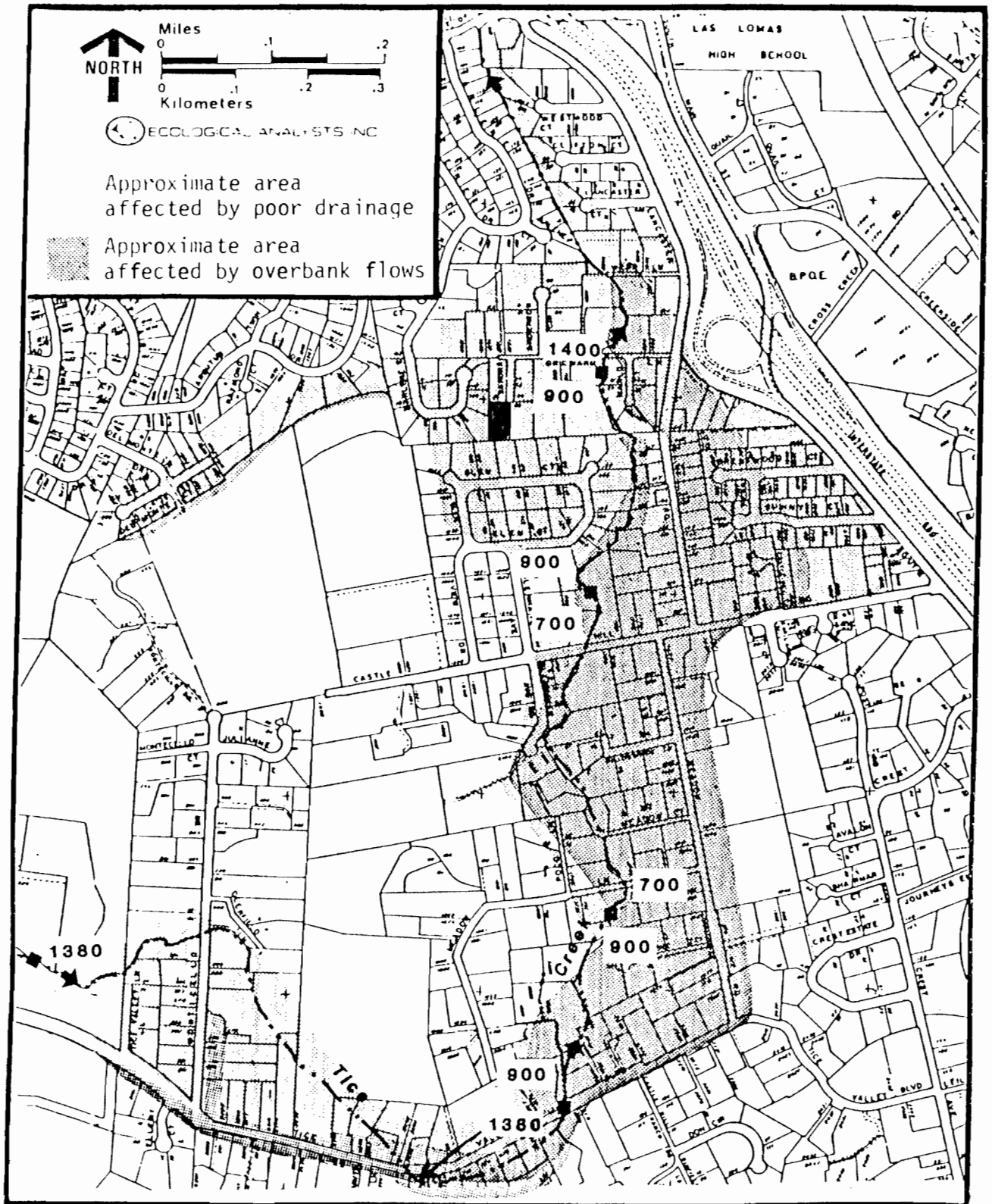
Finally, and most importantly, this project will affect Council Member Munn's property in substantially the same manner as other properties in the area. The purpose of the project is to provide flood protection to properties in the area against a 25-year storm. If the ultimate project succeeds and, as a result, increases the property value of Council Member Munn's home, we can expect that all other homes in the area will be affected in the same way.

Thank you for your analysis of the questions presented in this request. If you need any additional information, please contact me or Council Member Munn directly. Her number is (415) 944-1786.

Very truly yours,

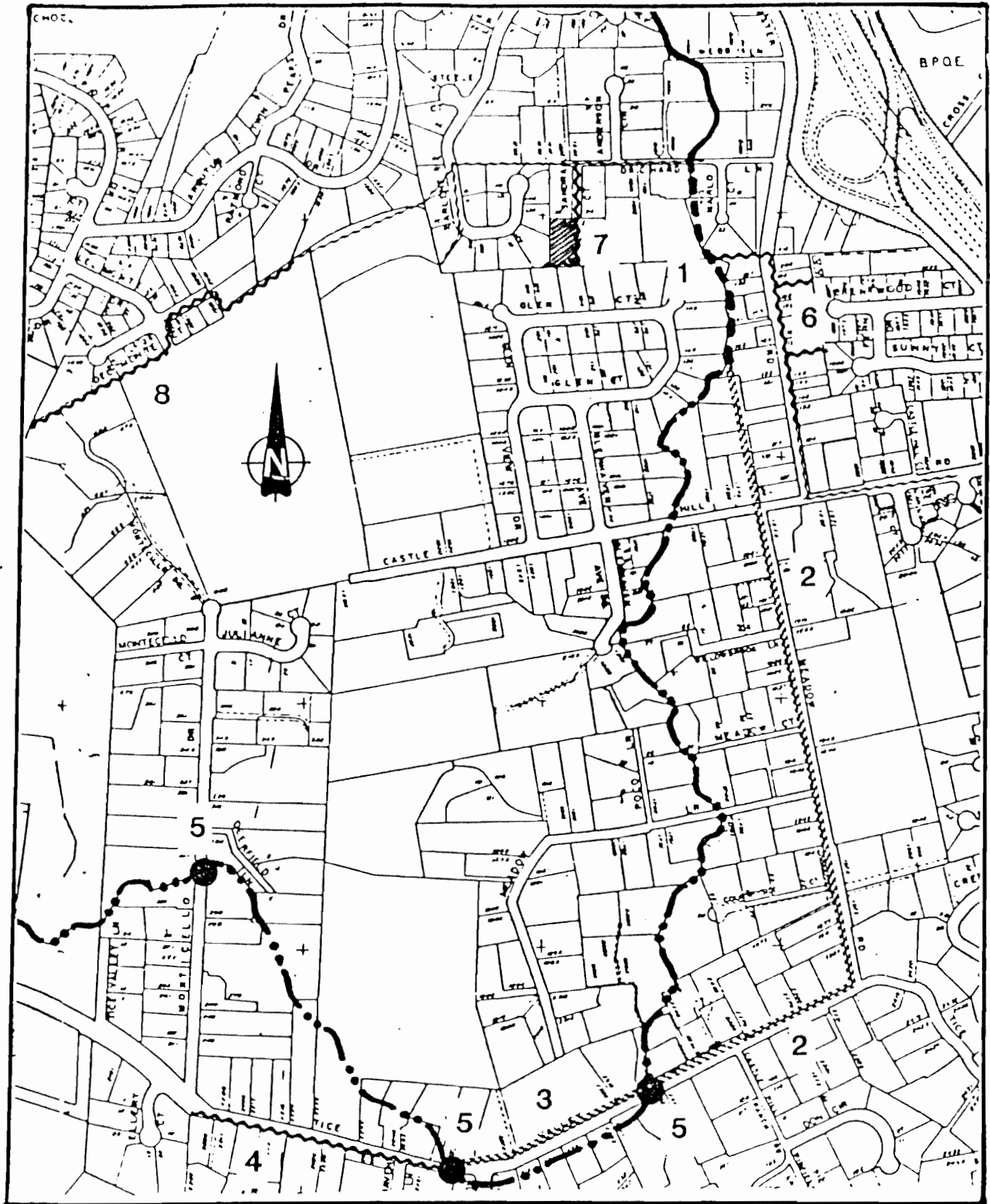
  
DAVID BENJAMIN  
City Attorney

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Enclosures



Approximate flood-prone areas, areas affected by poor drainage, and existing channel capacities (■, cfs) of Tice Creek. (See text for sources.)



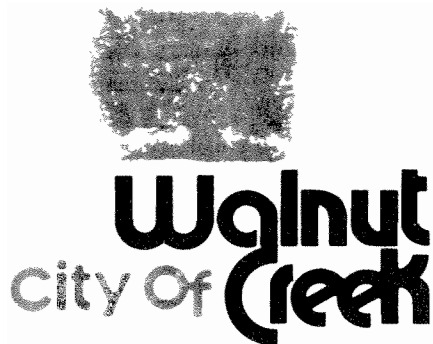


Miles: 0.1 0.2 0.3

- Existing Channelized Creek
- - - Proposed Channelized Creek
- ... Existing Creek - no change
- Culvert Replacement
- - - Proposed Bypass Line
- ~~~~~ Proposed Drain Line

Locations of existing and proposed (keyed to list in text) drainage facilities for Tice Creek.





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May 29, 1986

Mr. Robert E. Leidigh  
Counsel, Legal Division  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California 95804-0807

Re: Request for Advice on Behalf of Evelyn Munn

Dear Mr. Leidigh:

In my May 22, 1986 letter to you regarding Council Member Evelyn Munn, I neglected to identify Council Member Munn's property on Exhibits B and D. Corrected Exhibits, and a corrected copy of page 4, are enclosed with this letter. I apologize for the inconvenience.

Very truly yours,

A handwritten signature in dark ink, appearing to read "David Benjamin", with a long horizontal flourish extending to the right.

DAVID BENJAMIN  
City Attorney

DB:ct  
Enclosures

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that little or no flooding results, it can be expected that if this project were constructed, drainage in and around Council Member Munn's property would be improved; (2) Part of the project calls for a 30-inch pipe from Tice Creek south of Marlo Court, east of Lancaster Road and then south along Lancaster Road to connect to an existing drainpipe; the map on Exhibit D shows this underground pipe located upon a portion of Council Member Munn's property; (3) Part of the project calls for a 36-inch pipe from Orchard Lane south 375 feet along Sandra Court and then 80 feet west; again, the map on Exhibit D shows that this underground pipe would be located along a portion of Council Member Munn's property.

### III. QUESTION PRESENTED.

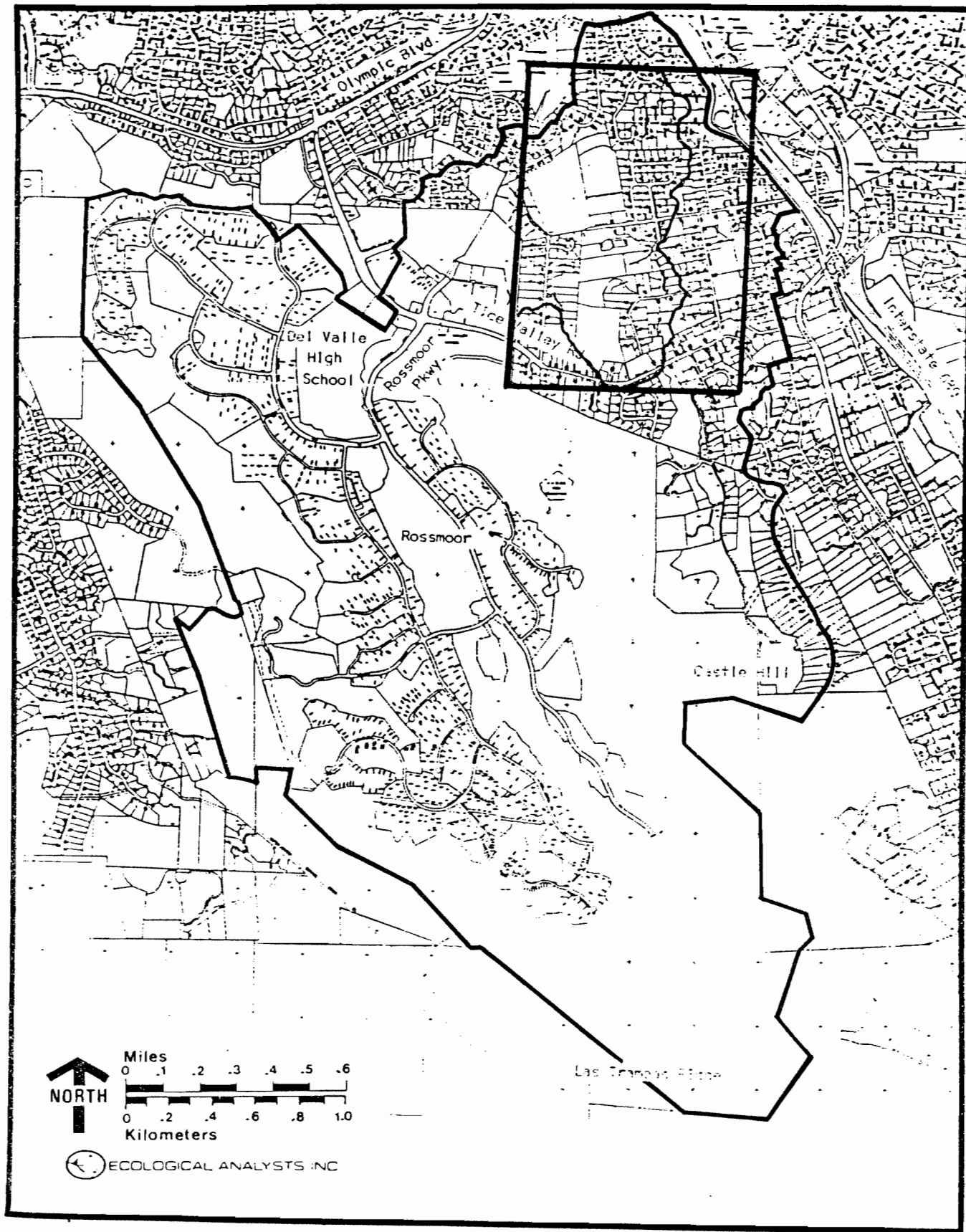
May Council Member Munn participate, as a member of the City Council, in any or all of the following stages in the approval process for Drainage Area 67?

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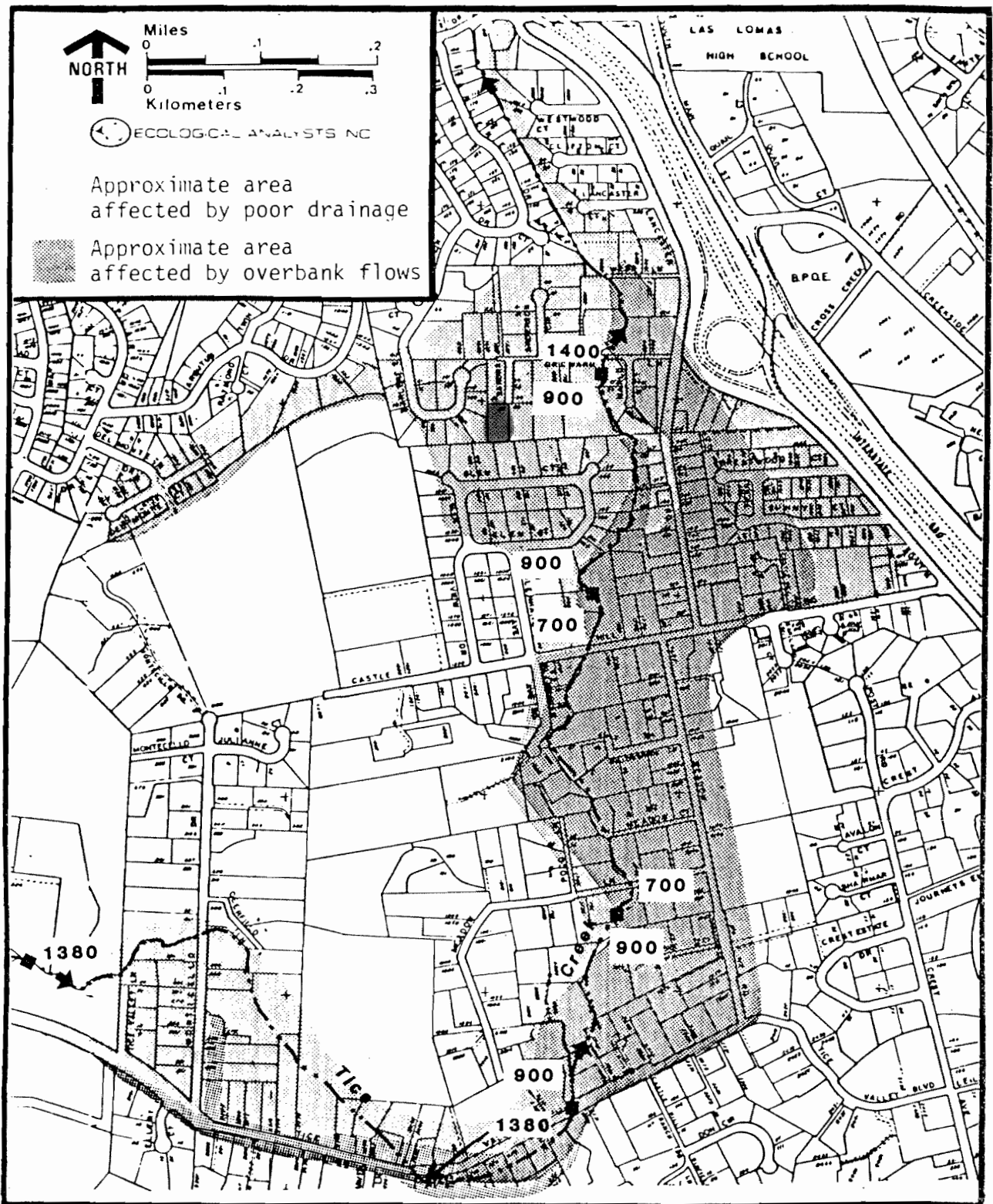
### IV. DISCUSSION.

There are facts presented in this request which suggest that, under current FPPC Opinions, Council Member Munn should be allowed to participate in the City Council's decisions regarding Drainage Area 67.

At the present time, it can be argued that it is not "reasonably foreseeable" that the value of Council Member Munn's home will be affected by the formation of Drainage Area 67. The City Council's apparent rejection of the project shown in the draft EIR means that, at this time, the nature of the project and its benefits and burdens, both physical and financial, are uncertain. Until the neighborhood task force has presented its alternative plan, and until that plan has been presented and analyzed, it is not possible to state with certainty whether, and to what extent, Council Member Munn's home may be affected. The lack of project definition also frustrates an analysis of the materiality of any financial effect on Council Member Munn's property. Until the drainage project is



Proposed Drainage Area 67, Tice Creek watershed.  
(Box indicates boundaries of Exhibit D.)



Approximate flood-prone areas, areas affected by poor drainage, and existing channel capacities (■, cfs) of Tice Creek. (See text for sources.)



# California Fair Political Practices Commission

July 10, 1986

David Benjamin  
City Attorney  
City of Walnut Creek  
P.O. Box 8039  
Walnut Creek, CA 94596

Re: Your Request for Advice on  
Behalf of Councilmember  
Evelyn Munn  
Our File No. A-86-182

Dear Mr. Benjamin:

This is to confirm our telephone conversation in which you indicated that you were not in need of an immediate response to the above-mentioned request for advice. You have graciously authorized us to delay our response until July 29, 1986 while I seek information from Councilmember Munn regarding the effect which the decisions regarding the drainage area will have upon her financial interests.

Thank you for your cooperation.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean  
Counsel  
Legal Division

JGM:plh



# California Fair Political Practices Commission

May 28, 1986

David Benjamin  
Walnut Creek City Attorney  
P.O. Box 8039  
Walnut Creek, CA 94596

Re: 86-182

Dear Mr. Benjamin:

Your letter requesting advice under the Political Reform Act has been received on May 27, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

John G. McLean  
Counsel  
Legal Division

JGM:plh



# California Fair Political Practices Commission

June 25, 1986

Evelyn Munn  
P.O. Box 8039  
Walnut Creek, CA 94596

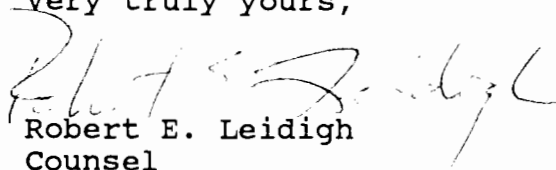
Re: 86-204

Dear Ms. Munn:

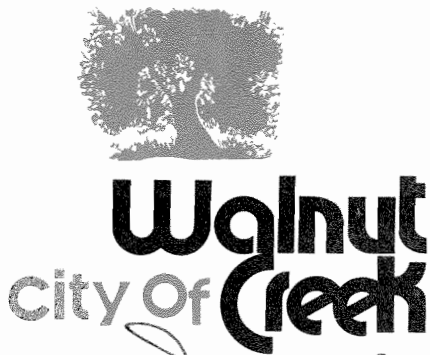
Your letter requesting advice under the Political Reform Act has been received on June 17, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh



June 11, 1986

F P P C

JUN 17 9 54 AM '86

Dear Mr. Leidigh,

This is to inform you and the D.P.P.C. that Ed Hoag and I are appealing the advice you communicated to Council Member Thelma Hall re: parcel aggregation. That communication from us will follow the latest "new information" related to you that may/may not affect his position as it becomes known to us.

This is also a request for information:

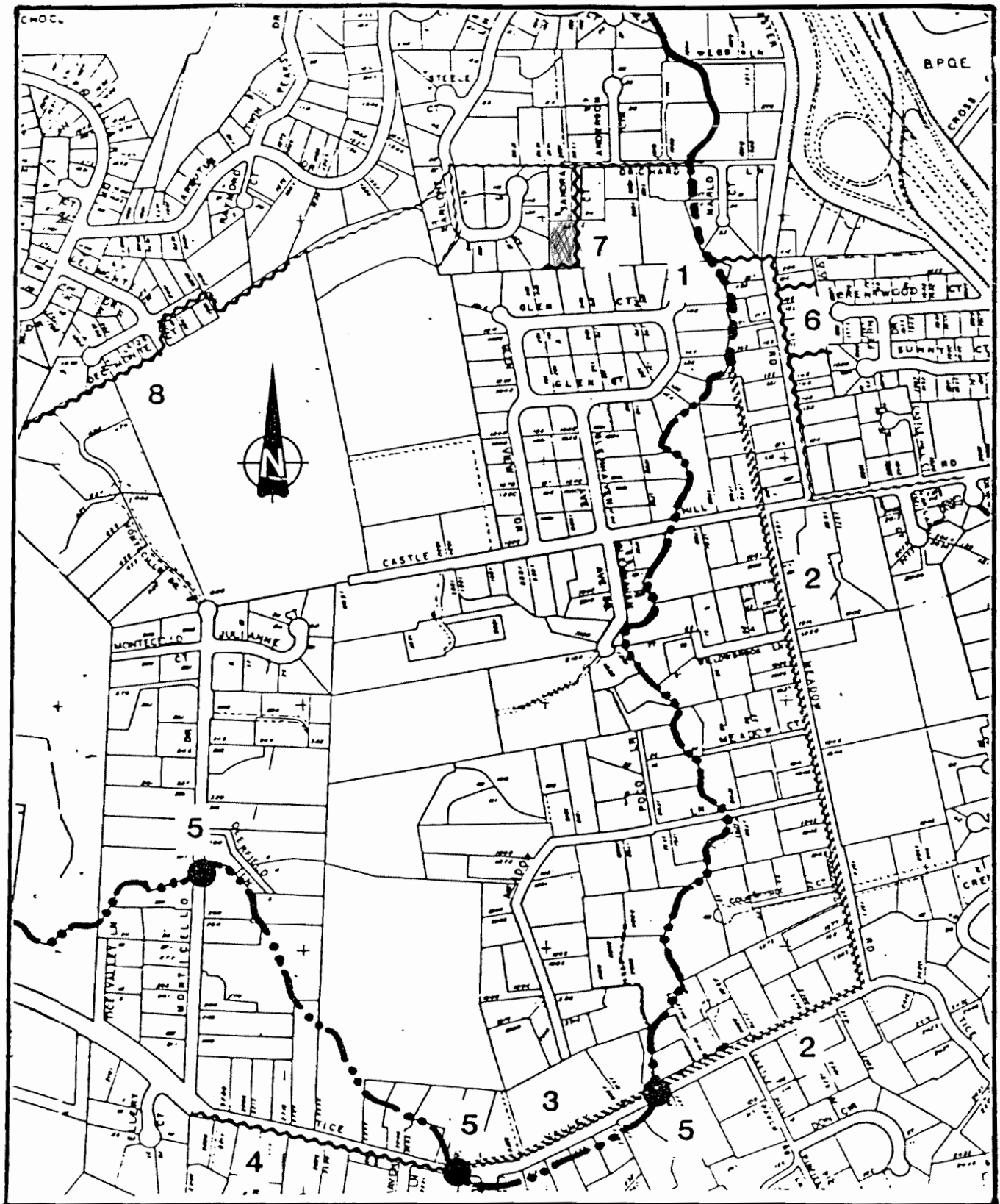
(1) What are the proper procedures for appeal to the commission as a whole; and

(2) May we have a list of those members, and addressees of same, who comprise the commission to which an appeal is appropriately addressed?

Thank you.

Sincerely,  
Thelma Hall





Miles: 0.1 0.2 0.3

- Existing Channelized Creek
- - - Proposed Channelized Creek
- - - Existing Creek - no change
- Culvert Replacement
- //// Proposed Bypass Line
- ~~~~~ Proposed Drain Line
- ~~~~~ Existing Drain Line

Locations of existing and proposed (keyed to list in text) drainage facilities for Tice Creek.

EXHIBIT D

CITY OF WALNUT CREEK  
COUNCIL AGENDA SUMMARY  
JANUARY 14, 1986

ORIGINATED BY: COMMUNITY DEVELOPMENT DEPARTMENT      AGENDA ITEM NO. \_\_\_\_\_

SUBJECT:            PUBLIC HEARING - DRAINAGE AREA (DA) 67 TICE CREEK  
                     WATERSHED AREA DRAINAGE IMPROVEMENT PLAN

BACKGROUND:      Contra Costa County, as lead agency, has prepared a Draft Environmental Impact Report (DEIR) for DA 67 which encompasses the Creek watershed area. The County Planning Commission has held public hearings to determine the adequacy of the DEIR. The purpose of this public hearing is to decide whether the City Council finds the DEIR to be adequate and whether the project is accepted or rejected.

FINDINGS:        The proposed Drainage Area 67 (DA-67) Formation Plan provides a drainage plan that would minimize flood danger in the drainage area. The approximate cost of 4.2 million dollars for the proposed drainage plan includes the following:

1. Extending the existing rectangular concrete channel at Orchard Lane 800 feet upstream in Tice Creek.
2. Installing approximately 4,500 feet of bypass line beginning at the upstream end of the proposed concrete channel and generally following Meadow Road and Tice Valley Boulevard to Montecillo Drive. This aspect of the plan saves approximately 4,000 feet of the existing creek, leaving it untouched in its natural state.
3. Additional tributary pipe systems to collect and convey local runoff into Tice Creek.

The formation of DA-67 also establishes a drainage fee of \$0.12 per square foot of impervious surface to be assessed on new development and construction only. This drainage fee would only raise approximately 20 percent of the total project cost. The additional required funds may have to be obtained from a multitude of sources, many of which are mentioned in the Draft Environmental Impact Report.

Under the provisions of the California Environmental Quality Act (CEQA) the City Council, as a Responsible Agency, should review and comment on the DEIR and any shortcomings it may have. The comments may deal with any aspects of the project or its environmental effects and should be as specific as possible.

There are three optional positions that can be taken by the Council after reviewing the project: (1) Endorsement; (2) Neutrality, or; (3) Rejection. If (1) and (2) are selected, the project can be heard and discussed at public hearings conducted by the County Board of Supervisors. If (3) is selected, the project will most likely be abandoned.

Various property owner groups and owners within 300 + feet of the proposed channel improvements and other interested persons and groups, have been notified of this hearing.

Representatives from the Contra Costa County Flood Control District will be present at this hearing to explain the project.

RECOMMENDATIONS:

Hold this public hearing and, after considering public comment, take one of the following actions:

- a. Endorse the project, or;
- b. Take no position on the project, or;
- c. Reject the project.

If (a) or (b) are selected, direct staff to forward any comments on the project to the County Board of Supervisors for their consideration in approving, modifying or rejecting the project.

Staff makes no recommendation on Council action.

FINAL IMPACT OF RECOMMENDATION:

To be determined when specific construction projects are selected.

ATTACHMENTS: Drainage Area 67 Draft Environmental Impact Report.  
(Available upon request).

COUNCIL ACTION REQUIRED:

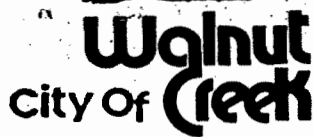
Hold this public hearing and, after considering public comment, take one of the following actions:

- a. Endorse the project, or;
- b. Take no position on the project, or;
- c. Reject the project.

If (a) or (b) are selected, direct staff to forward any comments on the project to the County Board of Supervisors for their consideration in approving, modifying or rejecting the project.

Prepared by Gordon Sweeney/mes  
doc 514  
[33]

GES



## TICE VALLEY WATERSHED SURVEY

The attached questionnaire, prepared by the City of Walnut Creek and the County Flood Control District, was designed to determine the interest of residents in the Tice Valley area in addressing solutions to their flooding problems.

This survey was prepared independently from a questionnaire you may have received in February that was created and distributed by local residents. Although the City and County will pay close attention to the results of that earlier questionnaire, both agencies will be using this survey to determine your preferences for flooding problem solutions.

The attached questionnaire will help us determine if there is enough local property owner support for a proposal to protect your area from flooding danger.

Proposals for solving the problem have thus far failed to generate sufficient neighborhood support. This poll is being sent to 450 property owners in the Tice Valley Watershed area (as shown in Attachment #1) who can anticipate problems due to storm runoff on the average of once every 3-4 years.

Several neighborhood storm drain systems exist, but these and any future local systems will not function properly because they must utilize Tice Creek. Due to the high bank and inadequate capacity, the creek causes these systems to back up.

In order to solve this problem, a sub-regional, regional or a combination system parallel to Tice Creek must be installed.

### OPTION #1: SUB-REGIONAL SYSTEM

This approach calls for a pipe extending from the creek (starting approximately 800 feet south of Orchard Lane) to Tice Valley Boulevard. There would be no construction in the creek. This pipe would reduce flooding problems to once every 8-10 years, but would be inadequate to carry full flow from the watershed. The system would cost an estimated \$500,000-\$750,000.

A sub-regional system would have to be financed solely by new development and existing residents. **There would be no funds available from the Flood Control District or Army Corps of Engineers.**

(Refer to attachment #2A for a location map of this proposed system.)

### OPTION #2: REGIONAL SYSTEM

A proposed regional system which would reduce flood problems to an average of once every 25 years (as shown in attachment #2 and described in attachment #2B) has historically failed to win neighborhood support. The main parts of this system would be the extension of the existing concrete channel 800 feet further up Tice Creek and installing a 108-inch diameter underground bypass pipe. The pipe would preserve approximately 4,000 feet of the creek's environment. This is the system described in the latest draft environmental impact report.

An analysis by County Flood Control engineers indicates this proposed system is the most economical, provides the preservation of most of Tice Creek and its habitat, and addresses the flooding problem on a regional rather than an individual neighborhood basis.

If this plan is adopted, a drainage fee area will be formed in which only new development will be required to contribute to its implementation. In other words, property owners who don't subdivide or build on their properties won't be required to pay.

The project is expected to cost \$4.5 million to complete. To date, the City has collected only \$135,000, and the County an additional \$55,000, toward these improvements. That means an additional \$4.3 million must be raised. New development alone will not be able to generate these funds. There are approximately 320 acres of land remaining to be developed in the Tice Valley Watershed area which will generate an additional \$840,000.

The project can be done in phases if funds become available from the Flood Control District, developers, or assessment districts formed by existing property owners. Another possibility is construction of the entire system by the Army Corps of Engineers, with the local funds contributed from collected fees and Flood Control Zone 3-B funds.

### OPTION #3: COMBINATION OF SUB-REGIONAL AND REGIONAL SYSTEMS

As a third alternative, if area property owners wished to participate in the costs of a sub-regional system, the Flood Control District could provide funds for upsizing the pipe system which then would be incorporated into a regional system at some future date. However, the residents would have to endorse such an expansion. In the interim, only the portion identified in the sub-regional plan would be installed.

This option would not cost property owners any more than Option #1 and would provide for future expansion if desired by the area residents.

We would appreciate your assistance by filling out the attached questionnaire and returning it by March 31 to Brad Rovnpera, Public Information Officer, City Hall, 1666 N. Main St., Walnut Creek 94596. If you have any questions or would like more information, call Wally Girard, 943-5826, or John Kerekes, 372-4470.

The City Council needs your input so it will be able to make a recommendation to the County Board of Supervisors. If the survey results and testimony at a future public hearing show there is insufficient support for any of the outlined projects, the Flood Control District will suspend work on the plans. It is important that you take this opportunity to express your opinion.

Thank you for your participation and cooperation

## SURVEY

Name \_\_\_\_\_

Address \_\_\_\_\_

1. How long have you lived at this address? \_\_\_\_\_

1a. Do you rent or own? \_\_\_\_\_

2. Did you attend the public informational meeting on March 19? \_\_\_\_\_

3. Have you experienced flooding problems? Yes \_\_\_\_\_ No \_\_\_\_\_

3a. If yes, to what extent (ie. yard, garage, house, other)?  
\_\_\_\_\_  
\_\_\_\_\_

4. Would you approve of the concept of a sub-regional project (Option #1)? Yes \_\_\_\_\_ No \_\_\_\_\_

4a. The cost of a sub-regional system is estimated to be in the neighborhood of \$500,000-\$750,000. If an assessment district could be formed that would include all of the property owners shown in attachment #1, an annual assessment (based upon a very preliminary payer-cost estimate) of \$200 per property owner would need to be levied to pay the costs over a 15-year period. Would you be willing to participate in an assessment district to finance the project? (The assessment could be paid in full or added to your property tax bill.) Yes \_\_\_\_\_ No \_\_\_\_\_

5. If you don't believe a sub-regional project would be adequate to address the flooding problems, would you approve of the Flood Control District's proposed regional plan (Option #2)? Yes \_\_\_\_\_ No \_\_\_\_\_

5a. If no, why? (ie. cost, environment, design, necessity or other concerns)  
\_\_\_\_\_  
\_\_\_\_\_

5b. If yes, would you be willing to participate in an assessment district to help finance the project? (The assessment could be paid in full or added to your property tax bill.)

Yes \_\_\_\_\_ No \_\_\_\_\_

5c. If you answered yes to question 5b, how much would you be willing to pay over a 15-year period? (Choose one)

\$100 / year \_\_\_\_\_

\$200 / year \_\_\_\_\_

\$300 / year \_\_\_\_\_

Other (specify) \_\_\_\_\_

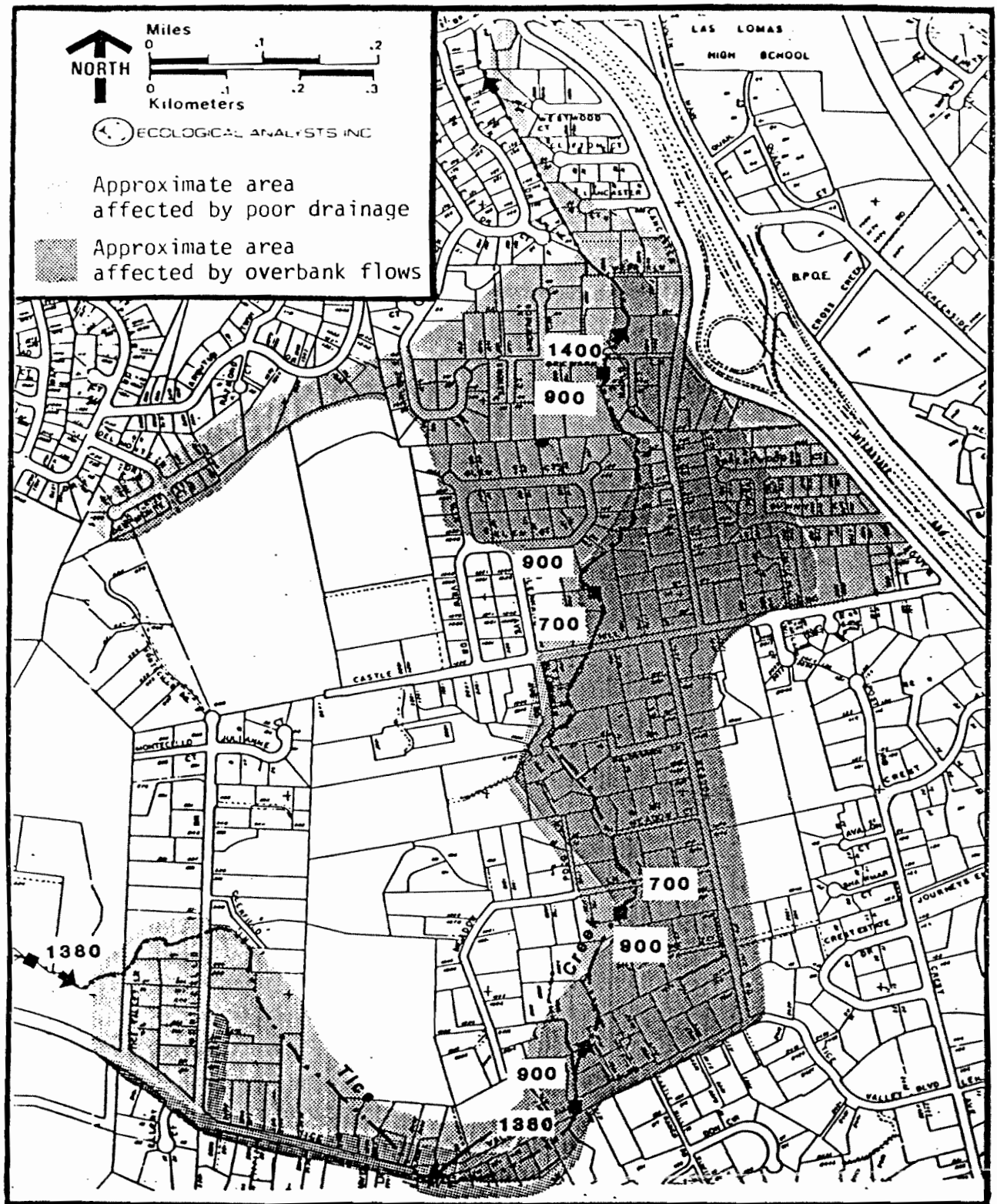
6. If you support the concept of a sub-regional plan, would you support, for now, the installation of an up-sized pipe at no additional cost to property owners beyond that provided for above which would accommodate expansion to a regional system if area property owners desired (Option #3)?

Yes \_\_\_\_\_ No \_\_\_\_\_

7. Any additional comments?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please mail your completed questionnaire in the enclosed envelope.

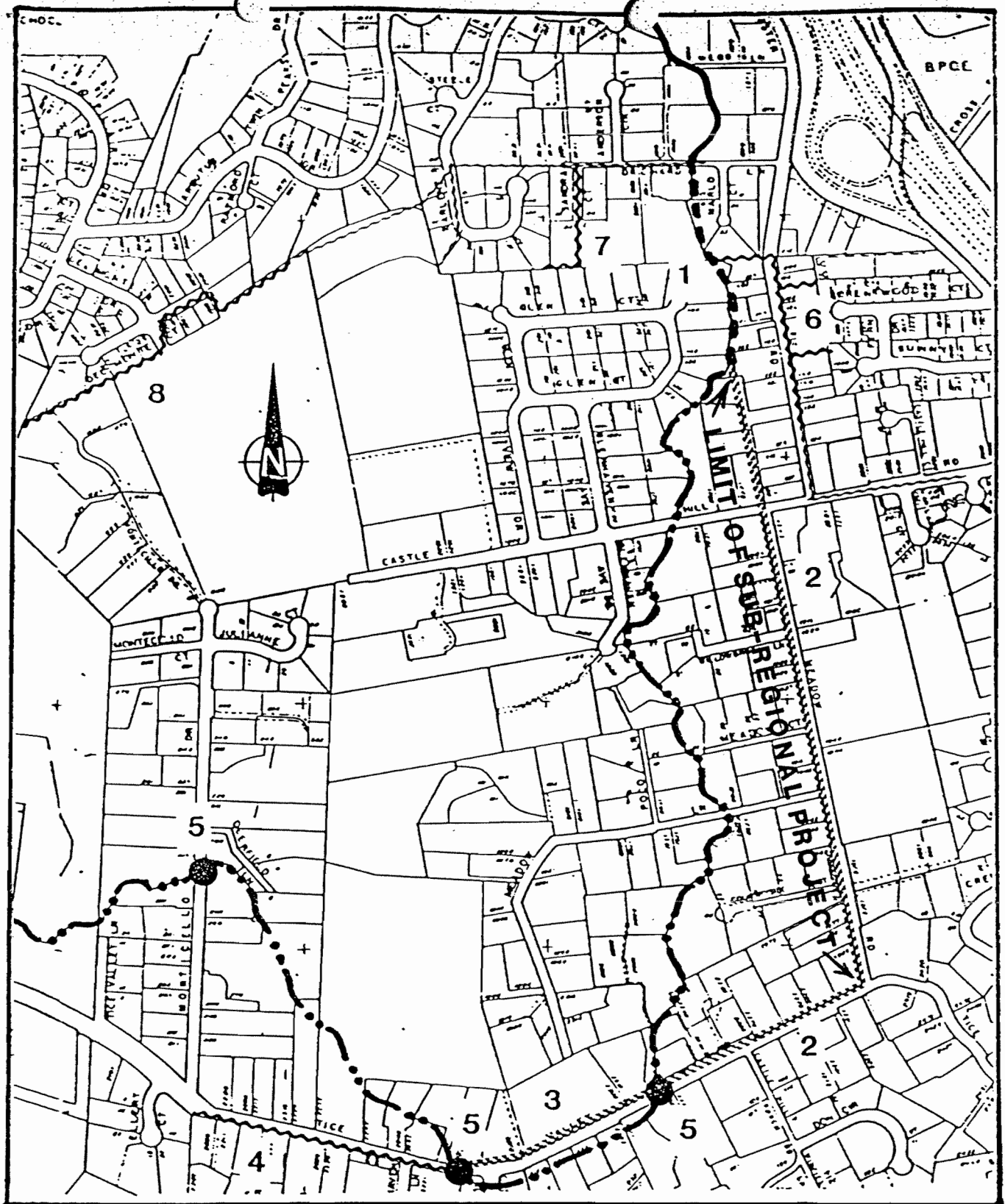
Thank you.



#### ATTACHMENT 1

Approximate flood-prone areas, areas affected by poor drainage, and existing channel capacities (■, cfs) of Tice Creek.





Miles: 0.1 0.2 0.3

- Existing Channelized Creek
- - - Proposed Channelized Creek
- - - Existing Creek - no change
- Culvert: Replacement
- ~~~~~ Proposed Bypass Line
- ~~~~~ Proposed Drain Line
- ~~~~~ Existing Drain Line

#### ATTACHMENT 2A

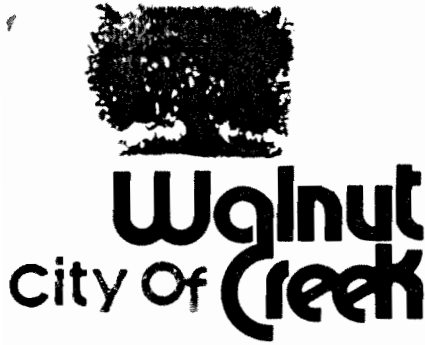
Locations of existing and proposed (keyed to list in text) drainage facilities for Tice Creek.



Features of the regional project are described as follows:

1. A twelve-foot-wide, eleven foot deep fenced rectangular concrete channel in Tice Creek extending from the existing channel at Orchard Lane upstream approximately 800 feet.
2. A 108-inch diameter spiral rib steel bypass pipe from the upstream end of the new concrete channel, south to and along Meadow Road, to and west along Tice Valley Boulevard as far as the most easterly Tice Creek crossing of Tice Valley Boulevard.
3. An 84-inch bypass pipe between the upstream end of the 108-inch diameter spiral rib steel bypass pipe and the next crossing of Tice Valley Boulevard to the west near Woodhaven Court. Junction and diversion structures also would be constructed near this point to accept flow from the drain line described in 4 below and to divert part of the higher stream flows into the bypass system.
4. A 36-inch pipe along Tice Valley Boulevard from the above junction, west to approximately Monticello Drive.
5. A double box culvert replacing the existing culvert under Monticello Drive, and replacement culverts at both of the Tice Creek crossings of Tice Valley Boulevard described in 2 and 3 above.
6. A 30-inch pipe from Tice Creek south of Marlo Court, east to Lancaster Road and then south along Lancaster Road to connect to an existing drain pipe.
7. A 36-inch pipe from Orchard Lane south 375 feet along Sandra Court and then 80 feet west.
8. A 24-inch pipe from the existing culvert 300 feet southeast of the Raymond Court cul-de-sac, southwesterly along property lines to the east end of Del Monte Court, along and south of Del Monte Court to a point 250 feet southwest of the Del Monte Court cul-de-sac to connect to an existing line.

In addition to these project features there would be minor associated changes or structures such as fencing; transitions and junctions between channel sections; contouring between the top of the bank of the channel and existing ground level; slope protection; inlets; manholes; pipes; culverts; removal, modification, and/or relocation of utilities; and acquisition of rights-of-way and easements as required for the final improved drainage facility.



F P P C  
JUN 2 8 26 AM '86

May 29, 1986


Mr. Robert E. Leidigh  
Counsel, Legal Division  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California 95804-0807

Re: Request for Advice on Behalf of Evelyn Munn

Dear Mr. Leidigh:

In my May 22, 1986 letter to you regarding Council Member Evelyn Munn, I neglected to identify Council Member Munn's property on Exhibits B and D. Corrected Exhibits, and a corrected copy of page 4, are enclosed with this letter. I apologize for the inconvenience.

Very truly yours,

  
DAVID BENJAMIN  
City Attorney

DB:ct  
Enclosures

Mr. Robert E. Leidigh  
May 22, 1986  
Page 4

that little or no flooding results, it can be expected that if this project were constructed, drainage in and around Council Member Munn's property would be improved; (2) Part of the project calls for a 30-inch pipe from Tice Creek south of Marlo Court, east of Lancaster Road and then south along Lancaster Road to connect to an existing drainpipe; the map on Exhibit D shows this underground pipe located upon a portion of Council Member Munn's property; (3) Part of the project calls for a 36-inch pipe from Orchard Lane south 375 feet along Sandra Court and then 80 feet west; again, the map on Exhibit D shows that this underground pipe would be located along a portion of Council Member Munn's property.

### III. QUESTION PRESENTED.

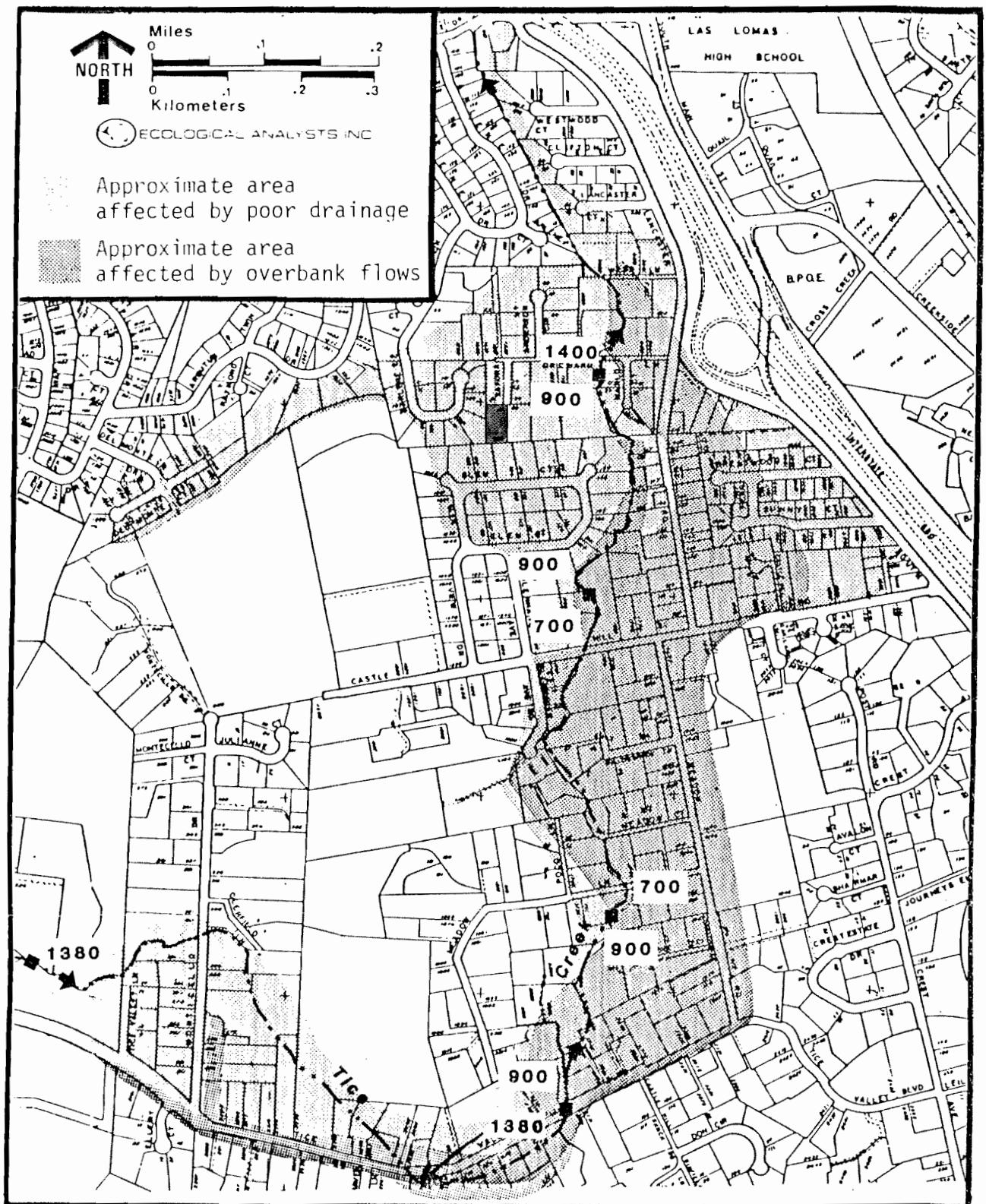
May Council Member Munn participate, as a member of the City Council, in any or all of the following stages in the approval process for Drainage Area 67?

1. The preparation and selection of alternative improvements for Drainage Area 67;
2. Approval of the draft environmental impact report for any such project;
3. A decision on whether Drainage Area 67 should or should not be formed within the City of Walnut Creek;
4. The formation of an assessment district for the purpose of financing drainage improvements, if the assessment district involves the levy of an assessment on Council Member Munn's property.

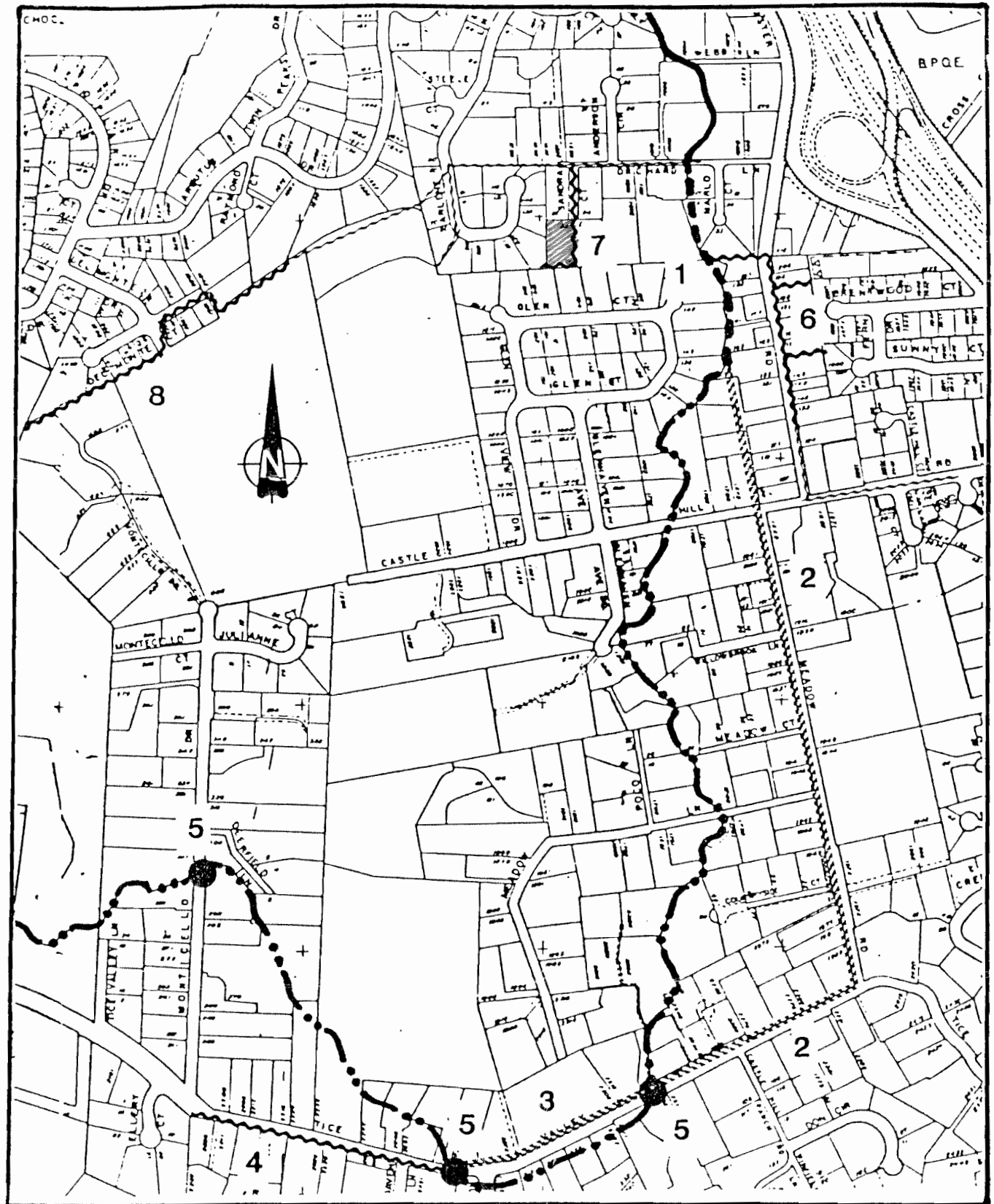
### IV. DISCUSSION.

There are facts presented in this request which suggest that, under current FPPC Opinions, Council Member Munn should be allowed to participate in the City Council's decisions regarding Drainage Area 67.

At the present time, it can be argued that it is not "reasonably foreseeable" that the value of Council Member Munn's home will be affected by the formation of Drainage Area 67. The City Council's apparent rejection of the project shown in the draft EIR means that, at this time, the nature of the project and its benefits and burdens, both physical and financial, are uncertain. Until the neighborhood task force has presented its alternative plan, and until that plan has been presented and analyzed, it is not possible to state with certainty whether, and to what extent, Council Member Munn's home may be affected. The lack of project definition also frustrates an analysis of the materiality of any financial effect on Council Member Munn's property. Until the drainage project is



Approximate flood-prone areas, areas affected by poor drainage, and existing channel capacities (■, cfs) of Tice Creek. (See text for sources.)



Miles: 0.1 0.2 0.3

- Existing Channelized Creek
- - - Proposed Channelized Creek
- · - Existing Creek - no change
- Culvert Replacement
- ////// Proposed Bypass Line
- ~~~~~ Proposed Drain Line
- Existing Drain Line

Locations of existing and proposed (keyed to list in text) drainage facilities for Tice Creek.

EXHIBIT D

**DRAFT ENVIRONMENTAL IMPACT REPORT  
FOR  
THE TICE CREEK WATERSHED AREA  
DRAINAGE IMPROVEMENT PLAN**



**INCLUDING:**

**ENGINEER'S REPORT — APPENDIX B**